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remote.⁶ While still other cases hold that if the intervening act is a negligent act of a third person, the original act will be treated as the proximate cause.⁷ But not if the act of the plaintiff himself constitutes the intervening cause.⁸ It has also been held that when ordinarily the defendant's act would be regarded as too remote, yet if he intended the result, the intention will supply the want of proximate cause.⁹

These decisions can all be brought under one principle. That is, that all consequences are deemed proximate which a person of average competence and knowledge, being in a like case with the person whose act is complained of, might be expected to foresee as likely to follow upon such conduct.¹⁰ Thus, in general, it might be said that a person is not expected to foresee that another will do a wrongful act.¹¹ Though he would be expected to foresee the doing of an innocent act,¹² or one merely negligent. And if the act of the defendant was intended and the intended consequences followed, the defendant cannot be heard to say that the act could not be foreseen.

So in the principal case the Court found that the City Council should have foreseen that some injuries might result from its wrongful act.

WITH HOW MANY PEOPLE MUST A WRITING HAVE A TENDENCY TO DISGRACE THE PLAINTIFF TO BE ACTIONABLE.

The so-called right of privacy has been very prominently before the legal public ever since it was put forth as a definite legal right in 1890.¹ In at least three jurisdictions its existence has been tested—in New York, in 1902, by a vote of five to four the Court of Appeals denied that there was such a right,² and in a recent decision in Rhode Island the reasoning and conclusion of the New York Court were followed;³ but in Georgia⁴ the right has been declared to exist.

⁶ *Vicars v. Wilcox*, 8 East, 1.

⁷ *R. R. v. Waddington*, 82 N. E. 1030 (1907).

⁸ *Washington v. Cox*, 157 Fed. 634.

⁹ *Cattle v. Stockton Water Co.*, L. R. 10, Q. B. 453-8.

¹⁰ Pollock on Torts (Webb's ed.), page 32.

¹¹ *Vicars v. Wilcox*, 8 East, 1.

¹² Cockburn, C. J., in *Clark v. Chambers*, L. R. 3, Q. B. D. 327.

¹ The Right to Privacy, IV. H. L. R. 193 (1890).

² *Roberson v. Rochester Co.*, 171 N. Y. 538 (1902).

³ *Henry v. Cherry & Webb*, 73 Atl. 97 (R. I. 1909).

⁴ *Pavesich v. Ins. Co.*, 69 L. R. A. (U. S.) 101 (Ga.).

In the article first putting forth this doctrine of privacy it was said: "Owing to the nature of the instruments by which privacy is invaded, the injury inflicted bears a superficial resemblance to the wrongs dealt with by the law of slander and libel," but as is very clearly shown in the article, the two rights are sharply marked off from each other; for while the right against libel is the right to have one's reputation protected—a thing entirely apart from one's inner feelings as far as the thing directly protected is concerned—the right to privacy is a right to be free from agencies that disturb the feelings of the injured party. Owing, however, to this superficial resemblance and also to the fact that the same act may infringe both the right of privacy and the right to be free from defamation, the privacy cases generally contain some allusion to whether the publication is a libel. In only one of them,⁵ however, has the subject of libel been discussed, and there only in a cursory manner; in the others it was mentioned only to be dismissed because of having been inadequately pleaded.⁶

In a recent case, *Peck v. Tribune Co.* (decided May, 1909, in U. S. Supreme Court), under facts similar to the typical privacy case, the question of libel was discussed and made the basis of the Court's decision, and the right of privacy dismissed with few words. B published the photograph of A, but put beneath the photograph the name X. Under the photograph was printed an indorsement of a certain brand of whiskey, stating that X had used it both for herself and as a nurse. In an action by A against B the Court, after finding that the indorsement was referable to A, although X's name was signed to it, held that the jury should have been allowed to decide whether the words constituted a libel. Holmes, J., in delivering the opinion, merely alludes to the right of privacy in the following words: "It is unnecessary to consider the question of whether the publication of the plaintiff's likeness was a tort *per se*. It is enough for the present case that the law should at least be prompt to recognize the injuries that may arise from an unauthorized use in connection with the facts, even if more subtlety is needed to state the wrong than is needed here."

In the lower Court⁷ the publication was declared not to be libellous *per se* because "the world has not yet arrived at a consensus of opinion on these matters, that to say these things of a person is independently of all other considerations to libel him,"

⁵ *Pavesich v. Ins. Co.*, *supra*.

⁶ *Roberson v. Rochester Co.*, *supra*; *Henry v. Cherry*, *supra*.

⁷ *Peck v. Tribune Co.*, 154 Fed. 330 (1907).

although "there are people by whom the use of whiskey as a tonic is considered wrong, and there may be people among whom to be a nurse is considered less desirable than not to be a nurse." The Supreme Court, speaking through Holmes, J., declared that whether the world had arrived at a consensus of opinion as to the moral effects of drinking whiskey was beside the point, and that "if the advertisement obviously would hurt the plaintiff in the estimation of an important and respectable part of the community, liability is not a question of majority vote."

The problem of with how many people the plaintiff's reputation must be injured in order to make words spoken to him actionable has been touched upon neither in the cases nor in textbooks. Mr. Odgers in his treatise states that the words must have a tendency to bring the plaintiff into shame, ridicule or disgrace among his "neighbors," but leaves us in the dark as to who his neighbors are.⁸ And so with other attempted definitions.⁹

In solution of the problem the law might say the words are actionable when they bring the plaintiff into ridicule, contempt or disgrace (1) with only a few members of the community; or (2) with a substantial minority; or (3) with a majority; or (4) with the whole community. To allow the first or require the last would manifestly be bad, because a community could never unanimously agree on the praiseworthiness or the blameworthiness of any description by which a man might be characterized. The third solution would have to be abandoned, too, because a man's honor and reputation could be seriously damaged before he was brought into disgrace, contempt or ridicule with the majority of the community. The case, then, would seem correct on principle—that disgrace, contempt or ridicule in the eyes of the substantial minority is all that is necessary.

It is suggested that with the proper innuendo a much clearer libel might have been proved. Those who knew the plaintiff knew that she was not a nurse, and to them the newspaper article would mean that she was lying. To assert that one is lying would be clearly libellous.¹⁰

⁸ Odgers on Libel and Slander (4th ed., 1905), 16.

⁹ See 25 Cyc. 244, note 1 (1906).

¹⁰ *Pavesich v. Ins. Co.*, *supra*.